(c) treating the upper layer sample with hypotonic solution [for a short period] and then thereafter adding hypertonic solution [into] to [said] the treated upper layer sample.

REMARKS

Applicant's attorney would like to thank Examiner Saucier for the courtesy of an interview on February 20, 1998 during which the outstanding rejection was discussed. Although no agreement was reached during the interview, it is believed that same was helpful in isolating the issues which need to be resolved.

Firstly, the examiner has rejected claims 1-2, and 6 as being indefinite with regard to use of the terminology "short period". Applicant has herewith amended the claims in consideration of this rejection, and reconsideration is requested. Applicant asserts that the claims are now definite.

The examiner also rejected claims 1-2, and 6 for lack of enablement. It was the position of the examiner that the examples utilize the solutions identified as "RLB" and "BELMAR", and that it was not clear whether same were commercially available nor were sufficient characteristics given for those solutions. In addition, the examiner contended that the method of the invention was empirical and involved the use of uncharacterized cell fractions, so that one skilled in the art would lack sufficient information of how to practice the invention, and that undue experimentation would be required.

Applicant's specification discloses, at page 5, lines 2-8, the use of hypotonic solution, and hypertonic solution in practice of the invention. The disclosed hypotonic solution is said to be one formed from a saponin solution, with the hypertonic solution being one of any number used

for converting a hypotonic solution to one which is isotonic . The examiner does not dispute that hypotonic and hypertonic solutions are known to those skilled in the art, and cites to U.S. patent 5,458,235, for a disclosure of a methodology utilizing those sorts of solutions. Applicant therefore asserts that the disclosure is enabling, because one skilled in the art surely would understand what sorts of solutions were being used. Moreover, because applicant has identified the solutions both by a brand name and source, then compliance has been made also with best mode.

In view of the above, applicant asserts that the disclosure is enabling, and that one skilled in the art could practice the invention without undue experimentation.

Claim 6 has been rejected as being anticipated or rendered obvious by any of Miyasaki, Gabay, Pereira, or U.S. Patent 5,459,235. Claims 1 and 2 have been rejected as being obvious over the '235 patent in view of Valeri. Applicant asserts that none of the references of record, either alone or in any reasonable combination, teaches or suggests fractionation of blood through a dextran aqueous solution into upper, intermediate, and lower layers, with the upper layer then being treated with hypotonic and hypertonic solution in order to create an antibacterial composition.

With regard to the rejection of claim 6, none of the references teaches or suggests fractionation of blood into upper, intermediate, or lower layers, with the upper layer then being treated to create an antibacterial composition. The examiner points to prior art disclosing various methods of creating antimicrobial proteins and antimicrobial peptides, but there is nothing to teach or suggest that those peptides and protein are the same or even related to the subject matter of claim 6. The examiner's rejection is premised on what is "reasonable to assume", but there is

nothing to suggest that what the examiner assumes with regard to applicant's invention is in any way related to what is disclosed in the references. An obviousness rejection must be premised upon some teaching, suggestion, or motivation in the art for the claimed invention, and a *prima facie* case of obviousness requires the examiner to point with particularity to same. In the present instance, the examiner has merely pointed to prior antimicrobial peptides and proteins, and has broadly asserted that they are the same or similar to what is claimed by applicant. The examiner has not, however, pointed where the references teach or suggest this similarity.

With regard to the rejection of claims 1-2, as was pointed out at the interview, applicant fractionates the blood through use of a dextran aqueous solution, and then treats the upper layer as claimed. In the '235 patent, on the other hand, the blood is sedimented by means not disclosed, but certainly not by means disclosed as being application of a dextran aqueous solution. Moreover, nothing in the '235 reference teaches or suggests that the "sedimentation" causes the blood to be fractionated into upper, intermediate, and lower levels as is claimed. Valeri, on the other hand, merely teaches that dextran may be used to prepare blood components, and again fails to teach or suggest fractionation into upper, intermediate, and lower layers. Thus, the combination of references proposed by the examiner would not suggest the subject matter claimed in claims 1-2.

In view of the amendment to the claims and the remarks appended hereto, favorable reconsideration is requested. Allowability over the art of record is asserted. An early action on the merits is solicited. An extension of time and the related fee are being contemporaneously

filed. It is believed that no other fees are due. Should that determination be incorrect, then please debit Account 13-5132 and notify the undersigned.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on 2/24/97

Joseph W. Berenato, III Reg. 30,546 Date